

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

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| Case No. | CV 22-6535 PA (Ex) | Date | December 28, 2022 |
| Title | Meilan Zheng v. Jaddou Ur Mendoza, et al. | | |

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS - COURT ORDER

Plaintiff Meilan Zheng (“Plaintiff”) filed her Complaint on September 13, 2022,^{1/} asserting claims against defendants Jaddou Ur Mendoza, Susan M. Curda, and Corina Luna (“Defendants”). (Docket Nos. 1, 6.) On December 14, 2022, the Court issued an Order to Show Cause (“Order”) because more than 90 days had passed since Plaintiff filed her Complaint and Plaintiff still had not – and has not – filed proofs of service of the Summons and Complaint on Defendants. (See Docket No. 14.) Absent a showing of good cause, an action must be dismissed without prejudice if the summons and complaint are not served on a defendant within 90 days after the complaint is filed. Fed. R. Civ. P. 4(m). The Order required Plaintiff to “show cause in writing on or before December 21, 2022, why this action should not be dismissed for lack of prosecution.” (Docket No. 14.) The Order also warned that “[f]ailure to respond to this Order may result in the imposition of sanctions, including but not limited to dismissal of the complaint.” (*Id.*) To date, Plaintiff has neither responded to this Court’s Order, nor filed proofs of service of the Summons and Complaint on Defendants.

Federal Rule of Civil Procedure 41(b) provides that a defendant may move for dismissal of an action “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Although Rule 41(b) provides for dismissal on the motion of the defendant, the Court can also dismiss an action sua sponte pursuant to Rule 41(b). See Link v. Wabash R.R., 370 U.S. 626, 629-30, 82 S. Ct. 1386, 1388, 8 L. Ed. 2d 734 (1962); see also Alexander v. Pac. Maritime Ass’n, 434 F.2d 281, 283-84 (9th Cir. 1970). The permissive language of Rule 41 – that defendant “may” move for dismissal – does not limit the Court’s ability to dismiss sua sponte if the defendant makes no motion for dismissal. Link, 370 U.S. at 630, 82 S. Ct. at 1388-89. The Court has the inherent power to achieve the orderly and expeditious disposition of cases by dismissing actions pursuant to Rule 41(b) with prejudice for failure to prosecute or for failure to comply with a court order. See *id.* at 629-30, 82 S. Ct. at 1388-89 (dismissal for failure to

^{1/}Plaintiff initially filed an incorrect Complaint on September 13, 2022, but then re-filed the corrected Complaint on September 15, 2022. (Docket Nos. 1, 6.)

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prosecute); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (same); Yourish v. Cal. Amplifier, 191 F.3d 983, 987 (9th Cir. 1999) (dismissal for failure to comply with court order).

In Henderson v. Duncan, 779 F.2d 1421 (9th Cir. 1986), the Ninth Circuit set forth five factors for a district court to consider before resorting to the penalty of dismissal: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” Id. at 1423. Cases involving sua sponte dismissal merit special focus on considerations relating to the fifth Henderson factor. Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998). Dismissal is appropriate “where at least four factors support dismissal, . . . or where at least three factors ‘strongly’ support dismissal.” Id. (citing Ferdik, 963 F.2d at 1263).

Here, in assessing the first Henderson factor, the public’s interest in expeditious resolution of litigation, will be satisfied by a dismissal. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Yourish, 191 F.3d at 990 (public’s interest in expeditious resolution of litigation always favors dismissal)). Relatedly, with respect to the second factor, the Court’s need to manage its docket will be served by dismissal. See id.

The third Henderson factor at least marginally favors dismissal. Defendants may be further prejudiced unless the complaint is dismissed. See Yourish, 191 F.3d at 991; Pagtalunan, 291 F.3d at 642 (holding that failing to timely amend risks prejudice and can justify dismissal).

In considering the fourth and fifth Henderson factors, this Court’s December 14, 2022 Order, as noted above, warned that “[f]ailure to respond to this Order may result in the imposition of sanctions, including but not limited to dismissal of the complaint.” (Docket No. 14.) Despite this warning, Plaintiff failed to respond to the Order or file proofs of service of the Summons and Complaint. Additionally, the Court intends to dismiss this action without prejudice. Accordingly, the fifth Henderson factor favors dismissal because the Court has adopted the “less-drastic” sanction of dismissal without prejudice. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996) (district court should first consider less drastic alternatives to dismissal with prejudice).

As a result of Plaintiff’s failure to prosecute this action and Plaintiff’s violation of the Court’s December 14, 2022 Order to Show Cause, this action is dismissed without prejudice. See Federal Rule of Civil Procedure 41(b); see also Yourish, 191 F.3d at 986-88; Ferdik, 963 F.2d at 1260.

IT IS SO ORDERED.